PT 99-51
Tax Type: Property Tax
Issue: Charitable Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

RESURRECTION HEALTH CARE CORP., APPLICANT	**Docket No: 98-PT-0002**
	Real Estate Exemption For 1996 Tax Year
	P.I.N. 12-25-207-020 **12-25-207-021** **13-30-100-011** **13-30-100-012** **13-30-100-013** **13-30-100-014** **13-30-100-015** **13-30-100-022**
v.	**Cook County Parcels**
STATE OF ILLINOIS **DEPARTMENT OF REVENUE**	**Robert C. Rymek** **Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Attorneys Susan Crowley and Kristen Benedict on behalf of Resurrection Health Care Corporation.

SYNOPSIS

This proceeding raises the limited issue of whether Cook County Parcel Index Numbers 12-25-207-020, 12-25-207-021, 13-30-100-011, 13-30-100-012, 13-30-100-013, 13-30-100-014, 13-30-100-015, and 13-30-100-022 (hereinafter the "subject property" or "subject parcels") should be exempt from 1996 property taxes as property used for charitable purposes under Section 15-65 of the Property Tax Code.

This controversy arose as follows:

On June 3, 1997, Resurrection Health Care Corporation (hereinafter the "applicant") filed a Property Tax Exemption Complaint with the Cook County Board of (Tax) Appeals (hereinafter the "Board"). Dept. Group Ex. No. 1, Doc. B. The Board reviewed the complaint and on March 27, 1996, recommended that the exemption be denied. On December 4, 1997, the Illinois Department of Revenue (hereinafter the "Department") adopted the Board's recommendation and denied the exemption concluding that the "The property is not in exempt use." Dept. Ex. No. 2. The applicant filed a timely appeal and on April 14, 1999, a formal administrative hearing was held at which evidence was presented. Following a careful review of the evidence, it is recommended that the Department's tentative denial of exemption be affirmed.

FINDINGS OF FACT

1. Dept. Gr. Ex. No. 1 and Dept. Ex. No. 2 establish the Department's jurisdiction over this matter and its position that the subject parcels were not in exempt use in 1996.
2. The applicant was incorporated as a not-for-profit corporation in Illinois on October 15, 1984. App. Ex. No. 5.
3. The applicant has a single member, "which shall be the Provincial Superior of the Sisters of the Resurrection and her Council." App. Ex. No. 6, p. 3.
4. The Sisters of the Resurrection is a religious congregation of the Roman Catholic Church. App. Ex. No. 5, p. 8.
5. The member appoints the Chairperson and President of the corporation and approves major corporate decisions. App. Ex. No. 6, pp. 3-4.
6. The applicant organized Resurrection Ambulatory Care Services (hereinafter "RACS") as an "affiliate" or "operating division" of the applicant corporation.

RACS was incorporated as a not-for-profit corporation on November 30, 1984. RACS is required to comply with the applicant's corporate bylaws and when RACS is dissolved, all of its assets are to be distributed to the applicant. App. Ex. Nos. 5, 8; Tr. pp. 17, 21.

7. The applicant's bylaws and articles of incorporation provide, *inter alia*, that applicant was organized for charitable purposes and to "sponsor and develop, directly or indirectly, facilities and programs for the accommodation, care and treatment of individuals suffering from illness, injury disease, disability or infirmity[.]" App. Ex. Nos. 5, 6.

8. Neither the applicant nor RACS has stock or shareholders and neither declares dividends. App. Ex. Nos. 5, 6; Tr. p. 21-22.

9. In addition to RACS, the applicant has numerous other affiliates or operating divisions, most of which are organized as not-for-profit corporations. The exception is Stranne Corporation, which is a for-profit corporation. App. Ex. No. 8, p. 7; Tr. P. 21.

10. The Department granted the applicant a sales tax exemption number on February 16, 1996. App. Ex. No. 7.

11. In Docket Nos. 85-16-597, 95-16-1072, 96-16-1118, 96-16-1117, 96-16-1147, and 97-16-1114, the Department exempted other parcels of land owned by the applicant. Administrative Notice; App. Ex No. 13; Tr. pp. 41-43.

12. On March 25, 1996, RACS acquired title to the subject property via a warranty deed and a trustee's deed. App. Ex. Nos. 1, 2; Tr. p. 9.

13. The subject property is located at 3115 North Harlem Avenue in Chicago, Illinois. Dept. Gr. Ex. No. 1, Doc. A.

14. The subject property is improved with a 33,820 square foot building. Dept. Gr. Ex. No. 1, Doc. A; App. Ex. No. 9.

15. The building serves two main functions: 12,840 square feet of the building is available for rental as physician office space; 20,980 square feet is used by the applicant as a surgical center. Tr. p. 24-25.

16. Of the 12,840 square feet of rental office space, only 1,715 square feet was actually leased out in 1996. That lease was entered into by the previous owner of the subject property prior to the applicant's acquisition of the subject property. Tr. p. 26.

17. The surgical center portion of the subject property was used for various surgeries, such as tonsillectomies, adenoid extractions, and arthroscopy. Tr. p. 28.

18. Patients who use the surgical center are billed both by RACS and separately by the physicians. This is the same billing procedure that is used at the applicant's other facilities. Tr. pp. 31-32.

19. During the applicant's 1996 fiscal year, the applicant received $324,533,177 in net service revenue, $19,784,514 in investment income, and $271,800 from contributions. App. Gr. Ex. No. 8, Doc. C, p. 4.

20. During the applicant's 1997 fiscal year, the applicant received $344,725,599 in net service revenue, $16,207,605 in investment income, and $272,772 from contributions. App. Gr. Ex. No. 8, Doc. C, p. 4.

21. During the applicant's 1996 fiscal year, the applicant provided $31,526,958 worth of unreimbursed services under its charitable care policies. During the applicant's 1997 fiscal year the figure decreased to $30,056,378. During both

years, the vast majority of these unreimbursed services were for services furnished to Medicare or Medicaid patients. App. Gr. Ex. No. 8, Doc. C, p. 13.

CONCLUSIONS OF LAW

An examination of the record establishes that this applicant has not demonstrated by the presentation of testimony, exhibits and argument, evidence sufficient to warrant an exemption for any portion of the subject property for any portion of the 1996 tax year. In support thereof, I make the following conclusions:

Article IX, Section 6 of the Illinois Constitution of 1970 limits the General Assembly's power to exempt property from taxation as follows:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The General Assembly may not broaden or enlarge the tax exemptions permitted by the constitution or grant exemptions other than those authorized by the constitution. Board of Certified Safety Professionals v. Johnson, 112 Ill. 2d 542 (1986). Furthermore, Article IX, Section 6 does not, in and of itself, grant any exemptions. Rather, it merely authorizes the General Assembly to confer tax exemptions within the limitations imposed by the constitution. Locust Grove Cemetery v. Rose, 16 Ill. 2d 132 (1959). Thus, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App. 3d 497 (1st Dist. 1983).

In accordance with its constitutional authority, the General Assembly enacted section 15-65 of the Property Tax Code, which exempts all property which is both: (1) owned by "institutions of public charity" and (2) "actually and exclusively used for charitable or beneficent purposes" (35 ILCS 200/15-65).

Pursuant to the applicant's request, I take administrative notice of the fact that in Docket Nos. 85-16-597, 95-16-1072, 96-16-1118, 96-16-1117, 96-16-1147, and 97-16-1114 the Department determined that the applicant is an institution of public charity whose property may be exempt from taxes if it is used for charitable purposes. Consistent with that determination, in the case at hand the Department did not deny exemption for the subject property based on a lack of exempt ownership. Rather, the denial was based upon a determination that, "The property is not in exempt use." Dept. Ex. No. 2. Thus, the only issue now before me is whether the subject property was being use primarily for charitable purposes in 1996.

It is undisputed that the 38% of the building set aside for physician office space was not in charitable use in 1996 and does not qualify for exemption from 1996 property taxes. Applicant's counsel properly conceded that point during opening statements. Tr. p. 3-4. Likewise, it is clear that if the remaining 62% of the subject property, which was used as a surgical center, qualifies for exemption, that exemption would be limited to 77% of the 1996 tax year because the applicant did not become the owner of the subject property until March 25, 1996. 35 ILCS 200/9-185. Accordingly, the issue becomes whether the surgical center portion of the subject property was used for charitable purposes for the 77% of the 1996 tax year during which the applicant owned the subject property. Following a careful review of the evidence, I conclude that the applicant has failed to establish such charitable use.

Determining when a medical facility qualifies for charitable tax exemptions is a problem that has repeatedly burdened the courts of this state. The difficulty with making this determination has been exacerbated by the fact that during the past century, hospitals have generally shifted away "from treating the poor for the sake of charity to treating the rich for the sake of revenue[.]" Paul Starr, The Social Transformation of American Medicine at 159

(1982); See also David Rosner, A Once Charitable Enterprise (1982); Robert C. Clark, *Does the Nonprofit Form Fit the Hospital Industry*, 93 Harvard L. Rev. 1417 (1980). As that shift has occurred, the courts and the scholarly legal community have increasingly been forced to come to terms with the fact that some "not-for-profit" medical facilities have become tools through which private physicians or administrators can maximize their income or "shelter" other profitable businesses such as laboratories. See, e.g. Utah County v. Intermountain Health Care Inc., 709 P.2d 265 (1985). Accordingly, the question that must be resolved in the case at hand is whether the surgical center was actually used for charitable purposes in 1996, or whether it was a tool for generating revenues which simply took the guise of a not-for-profit charitable facility.

In making this determination, it must be remembered that statutes exempting property from taxation are to be strictly construed in favor of taxation (Harrisburg-Raleigh Airport Authority v. Department of Revenue, 126 Ill. 2d 326, 331 (1989)) and that all facts are to be construed and all debatable questions resolved in favor of taxation. City of Chicago v. Department of Revenue, 147 Ill. 2d 484, 491-92 (1992). In addition, the taxpayer seeking the exemption bears the burden of proving by clear and convincing evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2nd Dist. 1991).

The fact that the property is owned by a charitable institution is not determinative. Illinois has long recognized that property of a charitable institution will not qualify for exemption where the primary use of the property is for purposes of generating income, even if that income is ultimately used for charitable purposes. See Salvation Army v. Department of Revenue, 170 Ill. App. 3d 336, 344 (1988).

Likewise, the fact that the applicant is organized as a not-for-profit corporation is not determinative. Property of a not-for-profit corporation will not qualify for exemption if the property is primarily used, directly or indirectly, to facilitate business pursuits, such as the private practice of medicine. People *ex rel.* County Collector v. Hopedale Medical Foundation, 46 Ill. 2d 450 (1970); see also Clark *supra* at 1436-37, 1444-1448 (noting that the not-for-profit form may actually help enhance physician revenues).

Thus far, Illinois courts have not set forth any single test for determining when medical facilities owned by not-for-profit charitable institutions are being used primarily for public charitable purposes as opposed to for purposes of directly or indirectly generating revenue. See Methodist Old Peoples Home v. Korzen, 39 Ill. 2d 149, 156 ("The concept of property use which is exclusively charitable does not lend itself to easy definition. Therefore each individual claim for tax exemption must be determined from the facts presented."). However, case law reveals several factual indicators which may be considered as being suggestive of either public benefit or private inurement. Those factual indicators include: (1) the level of support derived from charitable contributions or grants; (2) the level of public control; (3) the amount of services provided without charge; (4) the manner in which patients are billed and the degree to which collections are pursued; (5) the form and level of physician compensation; (6) non-physician compensation; (7) limitations on use; and (8) open medical staffs.[1]

[1] The courts apparently derived these specific factual indicators, at least in part, from the general guidelines set forth in Methodist Old Peoples Home wherein it was stated that "institutions of public charity" share the following distinctive characteristics: (1) they have no capital stock or shareholders; (2) they earn no profits or dividends, but rather, derive their funds mainly from public and private charity and hold such funds in trust for the objects and purposes expressed in their charters; (3) they dispense charity to all who need and apply for it; (4) they do not provide gain or profit in a private sense to any person connected with it; and, (5) they do not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. Korzen *supra* at 157.

These factual indicators are derived from an exhaustive review of Illinois case law including the following cases: The People *ex rel.* County Collector v. Hopedale Medical Foundation, 46 Ill. 2d. 450 (1970) (Not-for-profit applicant failed to clearly and conclusively show that a medical complex was being used exclusively for charitable purposes where medical complex was controlled by a physician who received a substantial salary and other financial benefits.); Cannon v. Southern Illinois Hosp. Corp. 404 Ill. 66 (1949) (Finding charitable use where: three of the incorporating doctors performed specialized functions at the hospital without charge; there was an open medical staff; hospital facilities were supported by funds and medical materials furnished by the State and Federal governments and by the American Cancer Society; all emergency cases were treated without questions as to ability to pay; relief patients were treated at a loss, and service open to all.); Board of Review of Cook County v. Provident Hosp. & Training School, 233 Ill. 242 (1908) (Hospital and training school held to be in exempt use where facilities were supported by donations, staffed by uncompensated trainees, and 20% of patients were treated without charge.); German Hosp. Of Chicago v. Board of Review of Cook County, 233 Ill. 246 (1908) (Hospital exempted where a "large proportion" of patients were treated either free or at less than actual costs, operating losses were made up for by public donations, any regular medical practitioner was allowed to use the facility, and there were no physicians either among the incorporators or on the board of directors.); Board of Review of Cook County v. Chicago Policlinic, 233 Ill. 268 (1908) (Hospital and school of medicine exempt where over 15% of revenue came from donations, 18,600 cases were treated without charge at the dispensary, 85% of hospital cases were treated either free or at below cost, and there was no restriction on which doctors could use the hospital.); Alivio Medical Center v. Department of Revenue, 299 Ill. App. 3d 647 (1998) (Despite fact that not-for-profit medical center received 25% of its revenue from

donations, it was still found to be not in exempt use where patients were repeatedly billed, applicant did not advertise that free services were available, and allegedly charitable activity was found to be simply the writing off of bad debts.); Lutheran Gen. Health Care v. Department of Revenue, 231 Ill. App. 3d 652 (1992) (The Health Care Medical Foundation was granted exemption for property used by physicians who received below market salaries and were not allowed to maintain private practices, but were required to perform educational, administrative, and research activities. In granting the exemption, the court noted that the Foundation had a policy of not suing to collect unpaid charges.) Highland Park Hosp. v. Department of Revenue, 155 Ill. App. 3d 272 (An immediate care center was held to be not in exempt use where: all patients were billed; advertisements did not disclose charitable nature of the facility; there was no evidence general public knew free care was available; only 6% of revenue was found to be uncollectable; and efforts were made to collect unpaid bills from those unable to pay.); Sisters of the Third Order of St. Francis v. Board of Review, 231 Ill. 317 (1907) (Charitable use found where: 5% of patients were charity patients; all reputable physicians were allowed to use the facility; institution received gifts and benevolent donations; staff donated all their property to the corporation and agreed to work as nurses for the corporation for the remainder of their lives in exchange for room, board, and clothing; and evidence clearly showed the hospital was not established for the professional or financial benefit of certain physicians with charitable care being only a pretense to avoid taxation.).

As the above noted case law reveals, none of the aforementioned factual indicators, in and of itself, establishes that a medical facility is charitable in nature.[2] Likewise, none of the

[2] For example, a "not-for-profit" medical facility which does not charge for usage of its rooms and equipment would, at first glance, appear to be charitable in nature. However, that charitable facade could quickly disappear if it were revealed that the facility was paid for and controlled by a select group of physicians who used the facility only for their own patients who the physicians then separately charged for personal services at above markets rates.

aforementioned factual indicators, standing alone, necessarily establishes that a facility is not charitable in nature.[3] Thus, it is apparent that the factual indicators set forth above are not rigid requirements. Rather, they are simply factors to be considered with an overall view to whether the applicant has shown the facility at issue was being used primarily for public benefit rather than private inurement.

At one extreme is a medical facility which is shown to be in charitable use through evidence demonstrating the facility: is largely supported by charitable contributions or grants; is subject to public control; provides large amounts of free services; does not bill patients; relies on volunteers to provide medical and administrative services; and is open for use by any patient or physician. At the other end of the spectrum is a facility whose non-charitable use is established by evidence that the facility: relies solely on patient revenues rather than public donations; is privately controlled; provides little or no free services; bills all its patients and engages in significant collection practices; pays medical or administrative staff higher than average salaries; and limits which patients and physicians are allowed to use the facility. The case at hand falls somewhere between these two extremes.

Here, applying the above noted factual indicators to determine whether the surgical center's use is more charitable than non-charitable is complicated by the applicant's organizational structure. The applicant's organizational structure necessitates examination of the above-noted factual indicators from two perspectives. First, these indicators must be considered with an eye towards whether the surgical center is, in and of itself, being used for charitable purposes. Second, it must be considered whether the surgical center is being used

[3] For example, a medical facility which receives no public donative support and relies entirely on income received for services rendered would, at first, appear to be non-charitable in nature. However, the facilities non-charitable facade could disappear if it is also shown that the facility: is publicly controlled; is open to anyone, provides a great deal of free care; is staffed

for charitable purposes when considered in light of the applicant's entire organizational structure.

by volunteer medical and administrative personnel; and does not pursue any collection activities against those who are unable to pay.

Support derived from charitable contributions or grants

In Illinois, the fact that a medical facility is generating its own revenues rather than relying upon public donations does not conclusively establish that the facility is being used for private rather than public benefit (see Lutheran General Health Care v. Department of Revenue, 231 Ill. App. 3d 652, 663-664). However, high levels of public donative support would be suggestive that the facility is being used for public rather than private benefit. See generally Mark A. Hall and John D. Columbo, *The Charitable Status of Nonprofit Hospitals: Toward a Donative Theory of Tax Exemption*, 66 Wash. L. Rev. 307 (setting forth that institutions who attract a substantial level of philanthropic support deserve a tax subsidy because the public's support signals the institution's worth).

Here, the applicant received overall public donations of approximately $270,000 per year. Though relatively insignificant in light of the applicant's overall finances (applicant derived over 1,000 times more revenue from services than it did from donations), such donations could be considered indicative that the applicant is engaged in charitable activities. However, whether the applicant itself is engaged in charitable activities is not at issue here. Rather, the issue is whether the subject property was used for charitable activities.

The applicant presented no evidence indicating that any of the donations it received were targeted by the donors to support the surgical center rather than the applicant's other facilities. Moreover, there was no evidence that any of the donations received by the applicant were actually used to support the surgical center. Thus, there is no evidence of public donative support that the applicant can fairly point to support its claim that the surgical center was being used for charitable purposes.

Public vs. Private Control

Private control does not, in and of itself, preclude a medical facility from being used for charitable purposes. However, all other things being equal, a medical facility which is subject to public control is, for obvious reasons, more likely to be used to benefit the public at large rather than private individuals.

Here, the surgical center, is controlled by the applicant, which is in turn controlled by "the Provincial Superior of the Sisters of the Resurrection and her Council." App. Ex. No. 6, p. 3. There was no evidence presented that the public at large has any significant control or input into the operation of the surgical center. Accordingly, this is not a case where the applicant can contend that the level of public control was indicative of charitable use.

Amount of Services Provided Without Charge

Obviously, a medical care facility, which dispenses a large percentage of free medical care, is more likely to be deemed to be in charitable use than a medical care facility which dispenses little or no free medical care.

According to the applicant's figures, during 1996 the applicant itself provided slightly more than 30 million dollars in unreimbursed services at all its various facilities combined. App. Gr. Ex. 8, Doc. C, p. 13. While that is certainly a significant amount of money, it still represents less than 10% of the applicant's annual net service revenue.[4] Moreover, even after providing this unreimbursed care, the applicant still had income which exceeded its expenses by over $56,000,000 in its 1996 fiscal year and by over $45,000,000 in its 1997

[4] It is worth noting that most hospitals provide some medical services without recompense for reasons which are not necessarily altruistic in nature. See Mark J. Garwin, M.D., Immunity in the Absence of Charity: *EMTALA and the Eleventh Amendment*, 23 S. Ill. U. L.J. 1 (1998) (discussing application of Emergency Medical Treatment and Women in Active Labor Act of 1986 (42 U.S.C. § 1395dd), which was enacted to protect patients who were denied emergency room treatment because of their indigent or uninsured status); see also 42 U.S.C.A. § 291 (Hill-Burton Act provides federal funding for the building of hospitals, but ties funding to the provision of uncompensated services).

fiscal year. App. Gr. Ex. No. 8, p. 4. Such figures do not support the conclusion that the surgical center was being used exclusively or primarily for charitable purposes unless it can be shown that a substantial portion of the applicant's unreimbursed services were actually provided at the surgical center itself.

The only evidence even remotely suggesting that free medical service was provided at the surgical center, were statements by Vince Andrews, the applicant's Director of Budget and Third-party Reimbursement. Andrews testified that free medical services were provided to certain individuals because there was a policy that if people were unable to pay, charity would be granted. Tr. p. 32. However, it appears that the free services Andrews referred to were not provided at the surgical center itself. Rather, based upon the applicant's consolidated financial statements it appears that the applicant's charity care was apportionable to three of the applicant's other facilities.[5]

Andrews also testified that "The services of the surgical center are open to anybody regardless of their age, their sex, their nationality, their creed, or their ability to pay." Tr. p. 31. Such testimony appears to have been simply a rote recitation of a policy statement and not convincing evidence of any actual charitable usage. In this regard I note that there was no testimony offered to show that during the 1996 tax year anyone was ever actually treated at the surgical center without charge or even at a reduced rate.

Further, the applicant's surgical center brochure does not indicate that medical services will be offered without regard to ability to pay. App. Ex. No. 12. Rather, the brochure indicates that the surgical center offers "convenient and cost-effective" care so patients can enjoy "one-stop-shopping" for surgical needs. App. Ex. No. 12.

[5] The consolidated financial statements indicate that the charitable care was provided at three of the applicant's other facilities: Resurrection Nursing and Rehabilitation Center, Resurrection

The fact that the applicant failed to clearly and convincingly set forth how much, if any, free medical service was actually provided at the surgical center in 1996 weighs strongly against a finding of charitable use, especially since the surgical center's brochure did not advertised that free care was available and instead used language which suggested that the surgical center was operated on a fee-for-use basis.

Billing and Collection Practices

The applicant also presented little evidence regarding the surgical center's billing procedures and collection practices. When asked how patients who attend the surgical center are billed, Andrews simply stated: "[Patients] receive a facility charge from Resurrections Ambulatory Care Services. They would receive a physician charge which is independent of Resurrection Health Care Corporation which would be generated by the physicians themselves." Tr. p. 31. Andrews then stated that this same procedure was used at the applicant's other facilities. However, because Andrews did not clearly set forth the surgical center's billing and collection used at the applicant's other facilities, it is unclear whether the applicant's other facilities were granted an exemption based on those procedures, or despite those procedures.

Simply stated, it is undisputed that the patients who used the surgical center were billed by both the surgical center and by the treating physicians. The applicant failed to set forth clear and convincing evidence to establishing that the billing and collection procedures employed had any characteristics indicative of benevolent use. Accordingly, it can not be fairly said that the applicant's billing and collections practices are indicative of charitable usage of the surgical center.

The Form and Level of Physician Compensation

Medical Center, and Our Lady of the Resurrection Medical Center. App. Gr. Ex. No. 8, Doc.

Based upon the limited evidence presented by the applicant, it is impossible to say whether the form and level of physician compensation is suggestive of private inurement or public benefit. The applicant had physician fee expenses of $17,029,607 in its 1996 fiscal year and $19,789,154 in it 1997 fiscal year. However, the basis for, and reasonableness of, those fees was never explained.

Given that the applicant was controlled by a religious organization rather than by the physicians themselves, and given the fact that physician fees constituted only approximately 6% of the applicant's total expenses, this would initially appear to be a case where the surgical center was not being used primarily to benefit physicians. However, physician fees apportionable to RACS individually constituted a substantially greater proportion (over 35%) of RACS's individualized expenses (App. Gr. Ex. No. 8, Doc. C, p. 25) than they did of the applicant's expenses as a whole. Thus, there remains a question as to whether physicians are the primary beneficiary of surgical center's existence.

Resolution of this question might have been possible if the applicant had presented testimony establishing whether the fees charged by physician's who used the surgical center were set above or below prevailing market rates. If the physicians charged below the prevailing market rates, it could be indicative of charitable usage. On the other hand, if the charges were higher than prevailing market rates it would suggest that the physicians were using the surgical center to leverage higher personal service fees. Because the applicant failed to provide clear evidence relating to the income of physician's who used the surgical center, the form and level of physician compensation can not be considered as supportive of the applicant's claim that the surgical center was being used primarily for charitable purposes.

C, pp. 10, 13.

Non-physician Compensation

As with physician compensation, the applicant did not clearly establish the form and level of non-physician compensation. From the evidence provided by the applicant, it is impossible to tell if administrators were making unduly high salaries or if their compensation was tied to surgical center revenues so as to be indicative of non-charitable use.

Limitations on Use

If the users of a medical facility are required to be a member of a particular group, the surgical center's use would ordinarily not be considered charitable in nature. Rather the use of the facility would be more akin to a membership benefit. See Sisters of the Third Order of St Francis at 320-321 (Hospital held exempt where "charity is extended to all members of the community, and is not confined to any particular class of individuals."); accord Oregon Physicians' Services v. Horn, 220 Or. 487, 507, 349 P.2d 831, 840 (1960) (A medical organization "which obviously exits only for the benefit of its members can not claim exemption from taxation even though it pays no dividends or devotes its entire profits to charity."); Geisinger v. Comissioner of Internal Revenue, 985 F.2d 1210, 1220 (1993) ("Arranging for the provision of medical services only to those who 'belong' is not necessarily charitable[.]").

Here, the applicant presented testimony that the surgical center was open to any patient who desired to use the facility regardless of organizational affiliation. The language of the surgical center brochure is consistent with that testimony, and there is no contradictory evidence in the record which would suggest that use of the facility was limited to any specific group as opposed to the public at large. Accordingly, in the case at hand, it would be improper to deny an exemption on that basis.

Open Medical Staff

For obvious practical purposes, even the most charitable of health care facilities could not be expected to keep an entirely open medical staff and would be expected to place practical limitations[6] on the physicians who are allowed to use the facilities. However, concerns over whether a medical facility is actually in charitable use arise where the facility is only open to physicians who have paid for use of the facility either directly (e.g. by paying a fee to use of the facility) or indirectly (e.g. by leasing office space from the owner of the facility). See Chicago Policlinic *supra* at 269 (In exempting the hospital, the court noted that no part of its donations "was donated by doctors or trustees who had patients in the hospital.").

[6] e.g. Licensing, educational prerequisites, maintenance of certain levels of malpractice insurance, etc.

Here, because portions of the subject property were available for lease as physician office space, it initially raises concerns that physician use of the surgical center was tied to rental of office space in the building. However, these concerns are alleviated by the fact that during the 1996 tax year there was only a single tenant whose lease originated with the properties previous owner, and the fact that the majority of the office space was vacant. Accordingly, it does not appear that during the 1996 tax year physician usage of the surgical center was tied to the leasing of office space.

Nevertheless, the applicant failed to establish how it determined which physicians would be allowed to use the surgical center. The surgical center's brochure simply states that "Many physicians currently on staff at the Surgery Center are also members at Resurrection Medical Center and Our Lady of the Resurrection Medical Center; ensuring the same quality of medical care." The absence of any evidence regarding how the applicant determined which physicians were allowed to use the surgical center weighs against a finding of charitable usage because it remains unknown whether usage of the surgical center was limited to physicians who provided the applicant with some sort of financial or service support.

Conclusion

The evidence presented at the hearing shows that the surgical center was a privately owned medical facility funded primarily by revenues generated from fees for services rendered, rather than by public or private donations. Although the surgical center was ostensibly open to the general public, the applicant failed to present any evidence that the public was ever advised that free care was available at the surgical center. Moreover, the applicant did not disclose how much, if any, free medical care was actually provided at the surgical center in 1996. The applicant also failed to disclose how the applicant determined

which physicians would be allowed to use the surgical center or the level of compensation of those physicians. Additionally, the applicant did not disclose the individual salaries of the surgical center's administrators. Likewise, the applicant failed to present evidence that its billing and collection practices had any characteristics indicative of beneficence. Under these circumstances, I conclude that the applicant has not clearly and convincingly established that the surgical center was in exclusively charitable use in 1996.

WHEREFORE, for the reasons set forth above, I recommend that subject parcels be denied exemption from 1996 real estate taxes.

July 22, 1999

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Robert C. Rymek
Administrative Law Judge